

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MONICA R. et al., Persons
Coming Under the Juvenile Court
Law.

B291694

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct.
No. 18CCJP02332A-F)

Plaintiff and Respondent,

v.

JOSEFINA H. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Affirmed in part and reversed in part.

Gina Zaragoza, under appointment by the Court of Appeal, for Defendant and Appellant Josefina H.

Judy Weisberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant Reyes R.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Josefina H. (mother) and Reyes R. (father) separately appeal from the orders of the juvenile court declaring their six children dependents. We conclude there is insufficient evidence to support jurisdiction over the six children based on their parents' domestic violence. However, the evidence supports the order declaring Briana R. a dependent as the result of the parents' neglect of her mental health. (Welf. & Inst. Code, § 300, subd. (b)(1).)¹ Accordingly, we reverse that portion of the jurisdiction order sustaining counts a-1 and b-2, and affirm the order sustaining count b-1, and affirm the disposition order.

FACTUAL AND PROCEDURAL BACKGROUND

I. Family background

This family consists of Monica R. age 17, Edgar R. age 15, Briana R. age 13, Daniella R. age 7, Karina R. age 5, and Anthony R. age 3. The parents never married but had a good relationship in the beginning. The two broke up after mother learned of father's infidelity. Father moved out of the house in late 2016. At the time the instant petition was filed, the three older children were living with father, while the younger three were living with mother. The family has been the subject of

¹ All further statutory references are to the Welfare and Institutions Code.

numerous referrals to the Department of Children and Family Services (the Department) between 2010 and 2017.

In 2017, the Department received a report that father hit Briana with a belt causing bruising on her legs because she was involved in a fight at school. Father also threatened to hit the child with a wire and to “get people to beat” her up. Briana explained that fighting was the only way she could express her anger. The family complied with voluntary family maintenance services (VFM) between April 2017 and January 2018, during which the parents and Briana participated in wraparound services and Briana attended therapy to address her mental health and a history of self-mutilation. She was also placed on informal probation at school for assaulting another student, which she completed successfully.

II. The referrals in 2018 and the Department’s investigation

Briana’s school counselor made a report to the Department in March 2018 that Briana was cutting her legs because she was feeling sad. The child had also mentioned suicide in a January 2018 journal entry. Briana told the counselor that she cut herself after father said he wanted to hit her “ ‘so bad’ ” for refusing to explain the reason for her sadness. According to the counselor, Briana learned during wraparound therapy to control her anger rather than to take it out on others, but did not address the reason for her anger with father.

Briana told the investigating social worker that she began cutting herself two years earlier. She could not remember the reason she first cut herself in fifth grade. In sixth grade she cut herself because a boy in her class “ ‘kept on touching’ ” her breast. She cut to release tension. She could not remember the reason she cut herself the second time that year. March 2018 was the

first time father was the reason she cut herself. Father said he wanted to hit her, which made her want to cut herself because he hit her “ ‘really hard before with the cord’ ” and told her she was dumb. She was “fearful” of father when he screamed at her. She was also afraid that father would find out about the cutting because once he told her, “ ‘if you ever want to cut yourself just tell me, I’ll make you bleed more.’ ” The reason she was sad was that her grandmother had died. Briana did not intend to commit suicide, and calmed down after father left the room. She liked her therapy but it had ended two months earlier. She was open to resuming counseling.

Once, Briana witnessed a violent confrontation between mother and father. They were arguing and father got on top of mother and held her hands to prevent her from hitting him. According to Briana, all mother did was scratch father. Briana resented father because his infidelity caused her parents to separate.

Father thought that Briana had stabilized after participating in wraparound services. His understanding was that Briana had met all of the treatment goals in wraparound and no longer needed therapy. Father failed to follow through with the appointment to initiate school-based services after wraparound ended. He was shocked to discover she had cut her thighs two days earlier. Father denied threatening to hit Briana, or cursing or verbally abusing the children, and claimed that Briana was lying. He felt awful about hitting her in 2017 and believed he learned his lesson during the Department’s services. Father told the Department that “ ‘[n]othing that I’ve tried to do helps. Nothing that I learned in the [wraparound] is helping me now’ ” with disciplining Briana. Father “ ‘would like . . . to have

this case open and to have therapy to understand how to help her . . . and how [he] can defend [him]self against her (child Briana.)’ ” The social worker from the earlier case opined that VFM had not helped father deal with his anger.

Mother told the investigating social worker that she and father were “extremely frustrated” by Briana’s rebelliousness, defiance, and manipulation of them. They were afraid that if they parented her, Briana would “turn around and harm herself.” Mother was unsatisfied with the wraparound services, believing that Briana’s thoughts of suicide indicated that the child needed something more intensive. Mostly she and father had a good relationship, were civil to one another, and were able to co-parent. In March 2018, mother began visiting the older children at father’s house after work. Mother sometimes stayed there overnight but the parents slept in different rooms.

As for the other children, Monica stated it had been years since father hit her. She and Edgar were worried about Briana. Edgar wanted to undergo therapy again. Daniella denied any current domestic violence between her parents but added that she saw her parents push each other and call each other names before they separated.

Two days after the Department’s investigation, Dr. Lee at Olive View Medical Center reported that Briana had come to the hospital by ambulance because she said she wanted to kill herself by jumping off a balcony. Briana told Dr. Lee that she wanted to hurt herself because of father’s verbal and physical abuse. The hospital put Briana on a hold and afterwards released her to father.

The Department could not recommend VFM because the family had just ended that service in January 2018. The

Department also determined that, although the family was at very high risk for future abuse, immediate detention was not warranted. All of the children old enough to make statements expressed feeling safe with their respective custodial parent. Although the parents had not fully understood the severity of Briana's mental health needs and the seriousness of the risk she posed to herself, they had arranged for Briana to receive therapy after she was released from the hospital.

In a last minute information for the court, the Department conveyed that Daniella, who had related that father pushed mother down the stairs, now claimed that she “ ‘made a mistake’ ” and believed that she had dreamed it. Both she and Karina reported that the parents no longer fight, but there are “ ‘little problems.’ ” Recently, mother had moved into father's house with the younger children. Realizing her relationship with father was not improving, she moved back out.

The Department's evaluation of the family explained that the combination of Briana's sensitivity and vulnerability and father's inability to empathize with or support her created an escalating risk to Briana. The Department stated that despite past VFM, father's negligence created a detrimental environment for Briana and contributed to her emotional distress and mental suffering to the extent that she was hospitalized for harming herself. Father failed to ensure that Briana receive essential treatment at the end of wraparound to continue stabilizing her mental health. Meanwhile, Briana's condition was worsening. Neither parent understood the severity of Briana's mental health needs and the serious risk she posed to herself.

III. The juvenile court's orders

At the adjudication hearing, the juvenile court sustained the petition's allegations in counts a-1 and b-2 alleging domestic violence between the parents and declared all six children dependents. As to count b-1 concerning Briana only, mother submitted. The juvenile court found true the allegation in count b-1 that Briana had behavioral issues and emotional problems and that her parents failed to obtain ongoing therapeutic services for her. (§ 300, subd. (b).)

As for the disposition, the juvenile court released the children to their parents under the Department's supervision and ordered the parents to undergo reunification services consisting of individual therapy to address case issues and family dynamics. Mother and father separately appeal.

DISCUSSION

I. The standard of review

The Department has the burden to prove by a preponderance of the evidence that the children come under the juvenile court's jurisdiction. (*In re Israel T.* (2018) 30 Cal.App.5th 47, 51.) We will uphold the court's jurisdictional findings if, after reviewing the entire record, resolving all conflicts in favor of the respondent, and drawing all reasonable inferences in support of the judgment, we determine they are supported by substantial evidence. (*Ibid.*)

II. No jurisdiction over the six children based on domestic violence

The juvenile court sustained the allegations in counts a-1 and b-2 that the parents "have a history" of engaging in violent altercations. On prior occasions in 2017, the children's father got

on top of the children's mother and held the mother's arms and hands down in the presence of the child Briana. The mother scratched the children's father." (§ 300, subds. (a) & (b).)²

The evidence shows that Briana witnessed the parents engage in a physical fight that "occurred several years before," when the parents were separating, that was "instigated by father's infidelity and the ultimate end of the parent's [*sic*] relationship." The parents separated in 2016 and do not live together. The Department described the fight as "an isolated incident." No child was hurt. Daniella, Monica, Edgar, and Karina all stated that the incident occurred long ago and their parents no longer fight. " " "The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." ' ' " (*In re M.M.* (2015) 240 Cal.App.4th 703, 719.) The evidence here of a *single, isolated, stale incident* in front of *only one child* is insufficient to support a finding that the six children were harmed or are at "substantial risk" of suffering harm under either subdivision (a) or (b)(1) of section 300. (See *In re Jonathan B.* (2015) 235 Cal.App.4th 115,

² Subdivision (a) of section 300 provides for jurisdiction over a child when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent." Subdivision (b)(1) of section 300 authorizes jurisdiction over a child when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left."

121 [insufficient evidence under § 300, subd. (a) where mother lived separately from father for a year]; *In re J.N.* (2010) 181 Cal.App.4th 1010 [insufficient evidence under § 300, subd. (b)(1) from a single episode of DUI and no evidence of substance abuse].)

III. Jurisdiction over Briana under count b-1 is supported by the evidence

The juvenile court sustained the count b-1 allegations that Briana “has demonstrated behavioral issues and[] mental and emotional problems including assaultive behaviors, suicidal ideation, and self-mutilating behaviors and the child’s parents . . . failed to obtain ongoing therapeutic services for the child.” (§ 300, subd. (b).)

No one disputes that Briana is in need of therapy. The child is emotionally vulnerable and has a problem with anger, particularly at father. She is often “sad.” She self-mutilates and contemplated suicide more than once. Briana’s condition is serious enough that the hospital placed her on a psychiatric hold. Worse, father claimed the child was lying about the reasons she hurt herself or wanted to commit suicide.

Although Briana’s mental health had improved during wraparound it quickly deteriorated as soon as those services ended. Both parents recognized that Briana’s condition declined. Both parents were at a loss about how to discipline and parent Briana. Mother claimed that the wraparound services were insufficient. Father failed to enroll the child in continuing services when the VFM case closed. Father also denied he was told to obtain continuing services for Briana after wraparound. The juvenile court apparently believed otherwise based on the reports by the social workers and wraparound liaison that they

made it clear to father that he was to enroll Briana in school-based services. We will not reassess that credibility finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52.) While Briana's condition worsened, neither parent attempted to help her by seeking mental health services. Instead, father continues to be emotionally abusive. Not only did parents neglect Briana by failing to seek the counseling she so patently needed, but father exacerbated the situation by yelling at and threatening to hit the suffering child.

Mother and father contend that there was no showing of a risk of harm to Briana at the time of the jurisdiction hearing because the child was already in therapy and improving, and so the parents were not neglecting her mental health.³ Mother cannot be heard to challenge Briana's dependency because she submitted to the jurisdiction on this count. Mother's forfeiture aside, the contention is unavailing because mother did nothing affirmatively to help the child while admitting that Briana required more intensive intervention than wraparound. Likewise, father, who failed to enroll Briana in therapy, asked the juvenile court to intercede. Briana would not be in therapy if the juvenile court had not intervened. The evidence supports the order taking jurisdiction over Briana under section 300, subdivision (b)(1) based on parental neglect.

³ Father argues that *he* had already benefitted from the wraparound services because *he* had “‘learned other forms of discipline and had not utilized inappropriate physical discipline since before the voluntary case.’” Even assuming the contention is factually accurate, the argument is beside the point. We are concerned with what has occurred *since* the Department's last involvement with Briana.

IV. No abuse of discretion in ordering the parents into individual therapy

The juvenile court has broad discretion when fashioning orders for the well-being of a child. (§ 362, subd. (a) [the court “may make *any and all reasonable orders* for the care, supervision, custody, conduct, maintenance, and support of the child”], italics added.) The court is also authorized to direct parents of a dependent child to participate in counseling. (*Id.*, subd. (d).) “The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.) We review the disposition order for abuse of discretion. (*Ibid.*)

We reject mother’s contention, joined by father, that the juvenile court had no authority to issue a dispositional order for her because she is nonoffending. First, mother is offending: we affirm jurisdiction over Briana based on both parents’ conduct. Second, the court has authority to require mother to undergo counseling irrespective of whether jurisdiction was based on mother’s conduct. (*In re Briana V.*, *supra*, 236 Cal.App.4th at p. 311.) Likewise meritless is mother’s argument that she did not need individual therapy. In fashioning a disposition plan, the court “may consider the evidence as a whole.” (*Ibid.*) The record here shows that mother has not learned from wraparound services and watched Briana’s mental health deteriorate. As for requiring father to participate in individual counseling, he fails to acknowledge the effect on Briana of his demeaning and insensitive comments, yelling, intimidation, and threats of physical violence. Furthermore, both parents would benefit from counseling to gain insight into how their acrimonious relationship has affected all of the children. The juvenile court

did not abuse its discretion in ordering both parents into individual therapy.

DISPOSITION

The order sustaining counts a-1 and b-2 is reversed. In all other respects, the jurisdictional and disposition orders are affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.